

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

AMANDA ZAMORA, D/B/A 3L §
LOTS AND DEVELOPERS LLC / §
3L LUCKSINGER APARTMENTS §
Plaintiff, §
v. §
§
AMERICAN WESTERN HOME §
INSURANCE COMPANY §
Defendant. §

CIVIL ACTION NO. 7:15-cv-00356
JURY DEMANDED

NOTICE OF REMOVAL

Defendant, American Western Home Insurance Company (“American Western”), hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

I. BACKGROUND

1. On January 2, 2015, Plaintiff, Amanda Zamora, D/B/A 3L Lots and Developers LLC / 3L Lucksinger Apartments (“Plaintiff”), filed her Original Petition in this action in the County Court at Law No. 6 of Hidalgo County, Texas, entitled *Amanda Zamora, D/B/A 3L Lots and Developers LLC / 3L Lucksinger Apartments v. American Western Home Insurance Company*, bearing Docket Number CL-15-0095-F (the “State Court Action”). The Original Petition (the “Complaint”) is the live pleading in this case. (A copy of the Complaint is attached hereto in accordance with 28 U.S.C. § 1446(a) as Exhibit C-2).

2. American Western was served with Plaintiff’s Original Petition on January 15, 2015. On February 13, 2015, American Western filed its Original Answer and Affirmative Defenses.

3. On August 24, 2015, Plaintiff’s counsel produced to counsel for American Western, for the first time, an estimate of actual damages to the property at issue in this lawsuit.

See Estimate, Exhibit E. The estimate alleges that the total actual damages to the Property are \$109,847.77. Plaintiff seeks actual damages, punitive damages, and attorney's fees according to the Complaint; however, the case was not removable when originally filed because Plaintiff did not allege a specific amount in controversy in her pleadings, and Plaintiff had not previously produced any document indicating the amount of damages she was seeking.¹ Although this case was not removable when originally filed, it became removable on August 24, 2015 because the estimate Plaintiff produced on August 24, 2015 establishes an amount in controversy within the jurisdiction of this Court for the first time.

4. Thus, this Notice of Removal of the case to the United States District Court is timely filed by American Western, it being filed no more than thirty (30) days after American Western received the estimate from Plaintiff's counsel on August 24, 2015 from which American Western could first ascertain that the case had become removable. *See* 28 U.S.C. §§ 1441, 1446(b)(3).

II. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

5. Removal of the state court action to this Court is proper pursuant to 28 U.S.C. §§ 1332 and 1441(a) and (b) because: (1) there is complete diversity between Plaintiff and American Western, and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

¹ Plaintiff stipulated in her Complaint that she was not seeking, and would not accept, more than \$74,999 in damages in this matter; however, that stipulation was made in bad faith. The damage estimate provided on August 24, 2015 clearly establishes by a preponderance of the evidence that Plaintiff is seeking actual damages well in excess of the minimum amount in controversy requirement of this Court, despite Plaintiff's stipulation otherwise. *See Roberson v. Progressive Sec. Ins. Co.*, No. CIV.A. 11-520-JJB, 2011 WL 4737417, at *2 (M.D. La. Sept. 16, 2011) report and recommendation approved, No. CIV.A. 11-520-JJB, 2011 WL 4732804 (M.D. La. Oct. 5, 2011); *see De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411 (5th Cir. 1995).

A. Complete Diversity Exists.

6. Plaintiff's state court action may be removed to this Court because it arises under 28 U.S.C. § 1332.

7. Plaintiff alleges in the Complaint that she resides in Hidalgo County, Texas; therefore, she is a citizen of Texas.²

8. Defendant American Western is an Ohio corporation with its principal place of business in Amelia, Ohio. Accordingly, American Western is a citizen of the State of Ohio.

B. Amount in Controversy Exceeds \$75,000.

9. On August 24, 2015, Plaintiff's counsel produced to counsel for American Western, for the first time, an estimate of actual damages to the property at issue in this lawsuit. The estimate alleges for the first time that the total actual damages to the Property are \$109,847.77. Plaintiff seeks actual damages, punitive damages, and attorney's fees according to the Complaint; however, the case was not removable when originally filed. Although this case was not removable when originally filed, it became removable on August 24, 2015 because the estimate Plaintiff produced on August 24, 215 establishes an amount in controversy within the jurisdiction of this Court for the first time. Because the estimate provided on August 24, 2015 establishes for the first time that Plaintiff seeks damages in excess of \$75,000, excluding interest and costs, the amount in controversy requirement for removal set forth in 28 U.S.C. § 1446(c)(2)(A)–(B) is satisfied.

² See Complaint ¶ 2.

III. VENUE

10. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the County Court at Law No. 6 of Hidalgo County, Texas, the forum in which the removed action was pending.

IV. ADDITIONAL REQUIREMENTS

11. American Western has provided notice to Plaintiff through delivery of a copy of this Notice and the state court Notice of Filing of Notice of Removal to Plaintiff's counsel of record, and has also provided notice to the Clerk of Court for the County Court at Law No. 6 of Hidalgo County, Texas through the filing of this Notice and the Notice of Filing of Notice of Removal into the record of the state court action.

12. Copies of all pleadings, process, orders, request for trial by jury, and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. § 1446(a).³

13. Pursuant to Federal Rule of Civil Procedure 81 and 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by copies of the following:

Exhibit A: Listing of All Parties and Counsel of Record;

Exhibit B: Civil Cover Sheet;

Exhibit C: Index of All Documents Filed in State Court Action;

Exhibits C-1-10: Copies of all filings in State Court Action and State Court Docket Sheet;

Exhibit D: List of Action Being Removed; and

Exhibit E: Plaintiff's Public Adjuster's Estimate produced on August 24, 2015.

³ See **Exhibit C:** Index of All Documents Filed in State Court Action.

WHEREFORE, Defendant, American Western Home Insurance Company, prays that this matter be removed to the United States District Court for the Southern District of Texas, McAllen Division, for further proceedings and disposition.

Respectfully submitted,

By: /s/ Valerie Henderson
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Valerie Henderson
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*Attorneys for Defendant American Western
Home Insurance Company*

CERTIFICATE AND NOTICE OF FILING

I certify that on August 25, 2015, the Notice of Removal was sent to the County Clerk of Hidalgo County, Texas, and that written notice of filing of the Notice of Removal was served via certified mail, return receipt requested, upon the attorney of record for Plaintiff.

/s/ Valerie Henderson
Valerie Henderson

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on August 25, 2015, the foregoing Notice of Removal was served on counsel for plaintiffs via Certified Mail, Return Receipt Requested, pursuant to the Federal Rules of Civil Procedure.

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/s/ Valerie Henderson

Valerie Henderson